IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/09/2004

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.10433 OF 1996
AND
W.P.M.P.NO.13831 OF 1996

P.Paramasivam .. Petitioner

-Vs-

1. State of Tamil Nadu rep. by
the Secretary to Government,
Minicipal Administration and
Water Supply Department,
Madras-9.

2. The Commissioner,
Tirunelveli Corporation,
Tirunelveli.

3. The Special Officer,
Tirunelveli Corporation,
Tirunelveli. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus as stated therein.

For petitioner : Mr.S.Silambannan

For respondents : Mr.R.Chandrasekaran,
Govt. Advocate -- R1
Mr.K.Balasubramanian-R2 & 3.

:O R D E R

The above Writ Petition has been filed by the petitioner praying to issue a Writ of Mandamus forbearing the respondents 1 and 2 from evicting the petitioner from the shop measuring 15' x 6' (90 square ft.) situate behind cloak room at the central Platform of Central Busstand in Tirunelveli as long as the petitioner pays the 15% of the enhanced rent once in a block period of 3 years as per the order of the Hon'ble Supreme Court.

2. In the affidavit filed in support of the above Writ Petition, the petitioner would submit that pursuant, to the order dated 26.6.92 passed by the first respondent, the second respondent has allotted a vacant site measuring to an extent of 48 square feet situate near the cloak room of Tirunelveli Bus-stand for rent at the rate of Rs.10/- per square feet, subject to some conditions; that the allotment was made for a period of three years from 1.4.1992 to 31.3.1995; that the petitioner has been doing the business of selling tea, coffee, cool drinks and snacks in the said shop; that the petitioner has been paying Rs.480/- p.m. as rent to the second respondent; that from 1.4.1993 to 31.3.1994 the petitioner paid enhanced rent of 15% i.e. Rs.552/- p.m.; that from 1.4.1994 to 26.12.1994 the petitioner paid enhanced rent of 15% i.e. Rs.630/- p.m.; that from 27.12.1994 he was permitted to occupy an additional space of 90 square feet and has been paying Rs.10/- per square feet; that the petitioner has been paying Rs.90 0/- as rent from 27.12.1994 regularly and promptly.
3. The further case of the petitioner is that the respondents 2 and 3 are taking steps to evict the petitioner from the shop to pressurise the petitioner to pay rent at exorbitant rates; that as per the orders of the Hon'ble Supreme Court in Civil Appeal 1991 to 1994 of 1999 , the respondents are not justified in evicting the petitioner from his shop as long as he pays the enhanced rent at the rate of 15% once in a block period of 3 years. On such averments, the petitioner would pray for the relief extracted supra.

4. In the counter affidavit filed by the second respondent, which was adopted by the respondents 1 and 3, besides generally denying the allegations in the affidavit filed in support of the above writ petition, the second respondent would further submit that originally the petitioner was allotted 32 square feet space on 1.2.1995 and an additional space of 16 square feet was allotted to the petitioner on 10.2.1995, but the petitioner has occupied 108 square feet with encroachment of 60 square feet with permanent structure instead of 48 square feet; that hence notice was issued on him to remove the encroachment of additional space of 60 square feet, which gives hindrance to the public and passengers in the bus-stand; that as per condition 5 of the sanction order A1/667/95 dated 1.2.1995 the site should be vacated and handed over to the Corporation as and when the shop gives hindrance to the public or passengers. On such averments, the respondents would pray for dismissal of the above writ petition.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents as well and the materials placed on record have also been perused.

6. During arguments, the learned counsel for the respondents 2 and 3 would submit that the respondents are justified in evicting the petitioner from his shop even though he pays the enhanced rent at the rate of 15% once in a block period of 3 years, since the period of licence is only for 3 years. At this juncture, the learned counsel for the respondents would cite a decision of this Court reported in 1998(1) CTC 465 = 1999 W.L.R. 155 (V.Chellappa and another v. The Commissioner,Tirunelveli Municipal Corporation and another) wherein a learned Judge of this Court besides citing the decision of the Supreme Court reported in AIR 1989 S.C.1026 and AIR 1992

S.C.1018, has held:

" It has been held that non-statutory contracts and right touching an immovable property cannot be enforced under Art. 226 of the Constitution. Therefore the petitioners are not entitled to resist the right of the respondent Municipality to auction, because, such right springs from the very right of ownership of the property so long as there is no statutory prohibition. It can hold the property and put it to better use to augment more income in public interest in the manner most advantageous to it. Any direction not to hold auction or to renew the licences is nothing but putting a limit on such right, which is impermissible in law. "
"The conditions of the auction under which the petitioners became the highest bidders make it clear that it was only a licence for a specified period. They have agreed to those conditions and taken up the licence right in the auction and it is not open to the petitioners now to raise a contention that they are entitled for a renewal on payment of 15% enhanced rent for a block period of three year as though it is a lease."

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is able to assess that originally the petitioner was allotted 32 square feet space situate near the cloak room of Tirunelveli Bus-stand for rent at the rate of Rs.10/- per square feet, subject to some conditions on 1.2.1995. Subsequently, an additional space of 16 square feet was allotted to the petitioner on 10.2.1995. The allotment was made for a period of three years from 1.4.1992 to 31.3.1995. As per condition 5 of the sanction order A1/667/95 dated 1.2.1995 the site should be vacated and handed over to the Corporation as and when the shop is a hindrance to the public or passengers. Further, according to the decision of the Hon'ble Supreme Court reported in A.I. R 1989 S.C.1026 and AIR 1992 S.C.1018, cited supra, the petitioner is

not entitled to resist the right of the respondent Municipality to auction, the shop because, such right springs from the very right of ownership of the property so long as there is no statutory prohibition.

8. Considering the fact situation of the above case, this Court is of the view that there is no warranting circumstances to forbear the respondents 1 and 2 from evicting the petitioner from the shop measuring 15' x 6' (90 square ft.) situate behind cloak room at the central Platform of Central Bus-stand in Tirunelveli and hence this writ petition does not merit acceptance and it becomes only liable to be dismissed and hence the following order:
In result,

(i) for the foregoing reasons assigned, the above writ petition does not merit acceptance and is dismissed accordingly;

(ii) however, in the circumstance of the case, there will be no order as to costs;

(iii) consequently, W.P.M.P.No.13831 OF 1996 is also dismissed.

Index:Yes
Internet:Yes

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To

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